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## **Why money laundering should be a crime under the jurisdiction of the international criminal Court (ICC)**

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### **Abstract**

Money laundering (ML) is the procedure wherein cash has been obtained unlawfully from the crime being returned to the economy without recognizing the wellspring of the assets. The handling can be alluded to as changing over the dirty money by then; washing it in a structure that no one can find the wellspring of the assets. Most country do not have the resource to try this crime in their countries. The organizational structure of the ICC allows it to work effectively and efficiently in investigations and adjudicative. The institution has stable workforce with a keen investigative body that can take up the offenses of money laundering.

The sound system of the institution allows it to establish system checks and balances in the place of controlling prosecutorial abuse throughout the process of an investigation this report justifies the reason why money laundering crime should be under the jurisdiction of the international criminal court. This can be implemented if parties' states adjust the domestic cooperation laws, procedures, and policies .It can also only work when the member state cooperate with the international criminal Court by not covering for the thieves but providing the necessary information required. Even though the court has resources to handle money laundering crime. It also faces challenges related to Complexity related to the financial investigation as compared to criminal and non-financial investigations.

## **Introduction**

Money laundering has become one of the biggest international crime that has an urgency to be controlled. Money laundering is money that is money that has been attain through illegal methods such as corruption, stealing ,drug trafficking etc. in which the thieves tries to wash that money and bring it back into circulation as clean money. Most countries have tried to deal with the crime of money laundering but they have been unable to do it due to challenges such as corruption, lack of resources, minimal support from the government and lack of information and legal frame lines to deal with the issues.

## **Problem statement**

The aim of the paper is to find out why money laundering should be under the jurisdiction of the international criminal court (ICC).

## **Money laundering under the jurisdiction of the internal criminal Court**

Money laundering should be a crime under the Jurisdiction of the international criminal court because it is a widespread problem, and the institution is the only institution with the resources and effective organizational structure to be able to deal with such crimes (Anderson, 2013). Some of the reason why ML should be under ICC are:

### **Organizational structure**

The organizational structure of the ICC allows it to work effectively and efficiently in investigations and adjudicative. The organization has about 700 employees with an operational budget of \$140 million annually. These give the institution a stable workforce with a keen investigative body that can take up the offenses of money laundering. The sound system of the institution allows it to establish system checks and balances in the place of controlling prosecutorial abuse throughout the process of an investigation (Anderson, 2013). The Office of the Prosecutor is separated into exceedingly particular divisions, and these specific divisions are capable of participating with local budgetary knowledge units to decide all sides of an issue, making it an exceedingly powerful investigative body. The structure of the organization is that the prosecutor, upon receiving an allegation of a crime, they will start their investigation of which the findings will be forwarded to the pre-trial chambers. The judge of the pre-trial chambers will look at the outcome and establish if the is a basis to open investigations.

### **Investigative Powers**

The ICC is the organization with the most resource compared to an individual state that gives it an upper hand in handling criminal cases related to money laundering.

The presence of the office of the persecutor who is responsible for the initiation of investigations into potential international offenses immediately they receive information about the crime. (Chibueze, 2006) . The office of the prosecutor (OTP) is equipped with enough resources to be able to conduct investigations, for instance, it is composed of investigators, cooperation adviser, prosecutors in the concerned countries. In which they are responsible for collecting and examining different types of evidence from any avenue that can receive information from in various ways such as questioning a range of different people involved or not involved in the crime and any documentation that might be of use. The information that is gathered will be presented before the Court as part of the proceedings and if the judges find it suitable to open cases against the crime that it will (International Criminal Court, 2018).

During investigations of crimes that have happened, the ICC requires fewer witness testimonies but majorly focuses on victim statements, and they deal more with document-oriented evidence (Anderson, 2013). With money laundering, they will be more of document evidence than victims that can attest to it, which is one of the strengths of the investigative powers that ICC poses.

### **Resources**

ICC has adequate resources to handle crimes that are related to money laundering. For instance, ICC has a total number of eighteen full-time judges. The judges have been divided into three categories, which are the pre-trial chamber, trial, and the appellate chamber (Bensouda, 2012). The ICC has a robust workforce of about 700 employees and operates under a budget of \$140 million annually. With this kind of resource, both human resources and financial makes the ICC capable of investigating and prosecuting money laundering cases (**Anderson, 2013**).

Judicative process.

The judicative process of the ICC includes a few procedural shields to guarantee a reasonable preliminary for the respondent (Bensouda, 2012 pg 1:p4). For instance, the rights to a speedy trial, to counsel, to compel the testimony of a witness, and to remain silent. Once the office of the present's evidence to the pre-trial chambers, the judges have a right to accept, decline, or review the charges that are presented by the OTP against the defendant (International Criminal Court, 2018): p 8. The jurisdiction division has a mandate of conducting preliminary investigation and providing advice on issues that are related to suitability and participation, and directions legal collaboration and outer relations for the OTP (International Criminal Court, 2018)

### **Evidentiary rules**

The ICC requires the persecution to present the defendant with exculpatory evidence it has against the defendant. The ICC has evidentiary rules that govern it, such as the prosecution to show the defendant with exculpatory evidence it has against the defendant (Bensouda, 2012). Once the office of the prosecutor has enough evidence towards the case and has attained summons or an arrest warrant of the persons incriminated, the OTP will have to convince the judges with the evidence they present at the pre-trial stage that it is sufficient evidence to the case.

The OTP can exhibit confirm as records, other substantial protests, or witness articulations; the OTP's witnesses are additionally addressed by the Defense and the other way around. As a significant aspect of the procedures, the OTP uncovers both implicating and absolving data to the Defense. Once the OTP has displayed all its confirmation, it is the turn of the denounced, with the help of his or her direction, to exhibit his or her Defense (International Criminal Court, 2018).

### **The full jurisdiction limit**

The ICC has a full juridical limit that can serve the international community compared to other organizations such as the International Court of Justice with the ability to handle crime against money laundering but have the limitation (Anderson, 2013). An example of a restriction that ICJ has is that it is a juridical organ of the UN, and therefore it can only decide issues in which both parties of claim are both members. The ICC has wide achieving purview, enabling it to hear cases including residents of countries around the world. It additionally offers an exceptionally settled and asset bounteous investigative framework.

The ICC is a perfect fit for money laundering cases since, in its investigation and prosecution system, it requires less of witness testimony involved in the crime, and they deal with more of documentation oriented evidence which is more available and needed in money laundering jurisdiction(Anderson,2013).

As far as creating results and effectively arbitrating cases, the nature of the cases the ICC mediates has prompted it neglecting to satisfy a few desires. While the ICC has ignored to fulfill a few wishes, these deficiencies are effortlessly avoidable when exploring and settling money laundering crime, since they are less arduous as far as investigatory obligations, and brisk settle since they are more standard and include far fewer witnesses and more archive prove than direct accounts. The ICC's cases are the consequence of arrainging such as troublesome, appalling wrongdoings, requiring casualty proclamations identifying with rules of dread inside countries. Money laundering, be that as it may, is a unique sort of offense, including monetary exchanges and connections between criminal associations and money related organizations.

Due to the unique nature of money laundering, the ICC won't confront similar issues it has in arraigning various violations and will be more compelling in settling these cases (Anderson 2013).

The money laundering crime is at an untouched high. All real worldwide financial institutions ought to be compelled to consent to a typical anti-laundering code and focus on keeping the crime and debasement happening globally. Besides, a policing and indictment body outside every country ought to summon this sort of crime. Lamentably yes is at an equal level as war crime and crimes against humanity, particularly in nations where demise from destitution is being caused by the money related assault of every country. For instance, numerous countries in Africa bear demonstration of this; despots were assaulting assets while individuals starve. There should be a re-assessment of the degree and vital policing and discipline of this crime.

Money Laundering isn't consistently global, yet when it will be, it bodes well for the International Criminal Court to get included to have an impartial body managing the case (Amrani, 2012).

### **How can it be implemented**

It is essential for state parties to adjust the domestic cooperation laws, procedures, and policies (International Criminal Court, 2015). A standout amongst the most critical parts of making a thriving money laundering statute is set up an extensive rundown of what constitutes "unlawful exercises." It is essential to figure out what qualifies as an unlawful movement because a successful statute restricts people and financial institutions from participating in monetary exchanges as a way to camouflage the returns of said unlawful exercises (Anderson, 2013).

Keeping in mind the end goal to adequately battle global money laundering, the worldwide network must systematize a statute precluding the training inside the universal framework. The most compelling international money laundering statute draws from local laws that have demonstrated compelling in their particular countries and incorporates administrative arrangements to rebuff money related foundations, also. The global network should then implement and mediate money laundering offenses in the worldwide framework (Anderson 2013).

Money laundering statute is primary to set up criminal assents for criminal associations engaged with money laundering, and they neglect to incorporate administrative arrangements pointed at keeping financial organizations from taking part in the crime. The global money-laundering issue includes not just criminal associations, yet additionally money related foundations that empower such exercises to take put. Thus, a successful international statute must incorporate administrative arrangements that enable prosecutors to rebuff these culpable cash associated establishments. Three regulatory segments are critical to setting up a supreme law for keeping budgetary establishments from participating in Money laundering: (1) client due to tirelessness, (2) using a hazard-based approach, and (3) setting up a budgetary knowledge unit. (Anderson, 2013).

The State affected with the money laundering should be encouraged to the Open internal investigation concerning conceivable money laundering crimes because of data got through collaboration asks for by the Court. Such investigations, for instance as to, could prompt data being gathered at the local level (and through partnership with third States) that might be likewise valuable for the Court.



Asking for help from a State in following the returns of wrongdoing can be a disappointing encounter for the Court for various reasons. Notwithstanding, that dissatisfaction can be turned away if – as on account of any historical examination with a standard measurement – when it gets an ask for, the State utilizes its particular tax evasion enactment to open an investigation concerning the individual or money related establishment accepted to hold the monetary resources. This methodology may offer ascent to a circumstance in which the State agent would need to ask for data from the Court. To help this second demand, the State agent would need to think about advertising data to the Court. The data, contained in the second ("turned around") order can interpret into essential prompts feed the first Court examination (International Criminal Court, 2015).

The international criminal Court should bring issues to light of the command of the Court and the commitments of States Parties. The Court should keep on explaining its authority concerning monetary examinations, which remains ineffectively comprehended. A manual clarifying the command and process at the Court could be produced and conveyed to accomplices. An illustration was given of a State that would just share money related data concerning an individual once a prosecution had been issued, regardless of the consideration of no such confinement in the Rome Statute, and irrespective of the way that the sharing of such data might be required to deliver a prosecution in any case (International Criminal Court, 2015).

Why money laundering should not be under the jurisdiction of ICC.

Even though the ICC has structure and the ability to act on such cases effectively and efficiently, they are also limited to the type of crimes over which it has jurisdiction to decide. (Chibueze, 2006) .ICC was constituted to be able to deal with crimes that are related to genocide and war.

Still, money laundering being an international crime is not in that level of the category of crimes that are against humanity and war.

Apart from the ICC, other organizations are believed to handle money laundering better than ICC. Some of these institutions deal only with financial problems and disputes internationally and not get involved in other crimes. An example of such an organization is Prime in the Netherlands, which began its operations in 2012. Its function is to educate and train financial institutions and judiciaries on how to handle and solve complex financial transactions issues. Such an institution appears to be more knowledgeable on matters of sophisticated money laundering offenses (Prime Finance, 2018).

Other organizations only specialize in dealing with the violation of international law. Their primary focus is the jurisdiction of breach of international law, and their organizational structure is mainly structured for that purpose (Anderson, 2013).

Money laundering crimes ought to be taken care of by the particular nations of where it happened; the equity frameworks in those nations ought to be sufficient to give the accused a reasonable trial and conviction, I don't accept there is a requirement for a global body like the International Criminal Court to be included (Anderson, 2013 ).

According to a conclusion that was made by Leeuwen, 2017 p1, he concludes that it is not fruitful to include money laundering as an international crime being handled by the ICC jurisdiction. This is because money laundering isn't suited to stop money streams as it tends to think back and inspect whether there is predicate wrongdoing rather than looking forward and solicit whether the reason for the money is criminal.

Furthermore, the ebb and flow topic ward of the Court accommodates too little an index of conceivable predicate wrongdoings for tax evasion, and the Court has excessively couple of potential outcomes, making it impossible to execute hunt, seizure and appropriation measures.

### **Challenges related to the implementation of money laundering crime.**

Complexity is related to the financial investigation as compared to criminal and non-financial investigations. The nature of this kind of inquiry is with the end goal that the utilization of some basic investigative strategies went for anchoring direct proof for use at preliminary is regularly impossible. Instead, financial investigation, especially those that expect to demonstrate the illegal nature or roots of benefits, as a rule, require components, for example, information, goal or reason to be construed from objective, truthful conditions. The devices at the transfer of the individual essential to mask responsibility for resources being referred to are additionally ending up progressively advanced, making it more troublesome still to follow money related streams to demonstrate their unlawful nature (International Criminal Court, 2015).

Financial investigations are perpetually international. This is a challenge faced by the Court, where parallels can be drawn with different locales, yet where the Court is additionally presented to specific troubles. Regularly for the Court, all data essential to direct a financial investigation is situated in a remote locale. As the Court does not have its special police compel or investigative powers, in other words, it is as a rule reliant on the collaboration of States Parties. States Parties are lawfully required to "collaborate completely" (article 86 of the Rome Statute), including, as necessary, through changes per their residential legitimate and institutional systems (section 88 of the Rome Statute).

By and by, be that as it may, the Court encounters significant challenges with regards to collaboration with State Parties to receive and share data as a component of examinations (International Criminal Court, 2015).

Domestic participation laws may contain holes and obstructions that are contrary to this commitment to collaborate; furthermore, they may all the more by and large not consider the Court's methods. A case was given of a State that would be notable actualize a demand for the solidifying of benefits (as a central measure for reparations) since this would require a choice by an ordinary judge, for which there was as of now no legitimate local road with regards to a Court ask. Extra helpful criticism from one of the States concerned the distinctive channels to be utilized at the household level concerning demands for "distinguishing proof and following" that don't require coercive measures and might be less demanding to actualize and asks for "solidifying and seizure" that have more extensive legitimate repercussions (International Criminal Court, 2015).

Criminals take advantage of the advantage they have if operating in different jurisdictions. This is due to the factor that investigations and persecutions become difficult when separate authority is involved since different cultures, various legal systems, and languages get involved, which may lead to loss of information. In other cases, they might be at least one of the jurisdictions with the law of banking secrecy (Evans, 1995).

Criminals have rapidly, more rapidly than most law enforcement agencies, received new methods for imparting and are exploiting copy transmissions, versatile scrambled phones, and no uncertainty on the Internet.

Numerous criminal associations have likewise been proficient at utilizing the full scope of washing vehicles, moving from one to alternate as enactment and law implementation centers on specific targets and washing plans (Evans, 1995).

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